

***Superseded 5/13/2014***

**57-8-43 Insurance.**

- (1) As used in this section, "reasonably available" means available using typical insurance carriers and markets, irrespective of the ability of the association of unit owners to pay.
- (2)
  - (a) This section applies to an insurance policy or combination of insurance policies:
    - (i) issued or renewed on or after July 1, 2011; and
    - (ii) issued to or renewed by:
      - (A) a unit owner; or
      - (B) an association of unit owners, regardless of when the association of unit owners is formed.
  - (b) Unless otherwise provided in the declaration, this section does not apply to a commercial condominium project insured under a policy or combination of policies issued or renewed on or after July 1, 2013.
- (3) Beginning not later than the day on which the first unit is conveyed to a person other than a declarant, an association of unit owners shall maintain, to the extent reasonably available:
  - (a) subject to Subsection (9), blanket property insurance or guaranteed replacement cost insurance on the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and
  - (b) subject to Subsection (10), liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas and facilities.
- (4) If an association of unit owners becomes aware that property insurance under Subsection (3)(a) or liability insurance under Subsection (3)(b) is not reasonably available, the association of unit owners shall, within seven calendar days after becoming aware, give all unit owners notice, as provided in Section 57-8-42, that the insurance is not reasonably available.
- (5)
  - (a) The declaration or bylaws may require the association of unit owners to carry other types of insurance in addition to those described in Subsection (3).
  - (b) In addition to any type of insurance coverage or limit of coverage provided in the declaration or bylaws and subject to the requirements of this section, an association of unit owners may, as the management committee considers appropriate, obtain:
    - (i) an additional type of insurance than otherwise required; or
    - (ii) a policy with greater coverage than otherwise required.
- (6) Unless a unit owner is acting within the scope of the unit owner's authority on behalf of an association of unit owners, a unit owner's act or omission may not:
  - (a) void a property insurance policy under Subsection (3)(a) or a liability insurance policy under Subsection (3)(b); or
  - (b) be a condition to recovery under a policy.
- (7) An insurer under a property insurance policy or liability insurance policy obtained by an association of unit owners under this section waives the insurer's right to subrogation under the policy against:
  - (a) any person residing with the unit owner, if the unit owner resides in the unit; and
  - (b) the unit owner.
- (8)
  - (a) An insurance policy issued to an association of unit owners may not be inconsistent with any provision of this section.

- (b) A provision of a declaration, bylaw, rule, or other document governing the association of unit owners that is contrary to a provision of this section has no effect.
  - (c) Neither the governing documents nor a property insurance or liability insurance policy issued to an association of unit owners may prevent a unit owner from obtaining insurance for the unit owner's own benefit.
- (9)
- (a) This Subsection (9) applies to property insurance required under Subsection (3)(a).
  - (b) The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding:
    - (i) items normally excluded from property insurance policies; and
    - (ii) unless otherwise provided in the declaration, any commercial condominium unit in a mixed-use condominium project, including any fixture, improvement, or betterment in a commercial condominium unit in a mixed-use condominium project.
  - (c) Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a unit or to a limited common area associated with a unit, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a unit or to a limited common element associated with a unit.
  - (d) Notwithstanding anything in this section and unless otherwise provided in the declaration, an association of unit owners is not required to obtain property insurance for a loss to a unit that is not physically attached to:
    - (i) another unit; or
    - (ii) a structure that is part of a common area or facility.
  - (e) Each unit owner is an insured person under a property insurance policy.
  - (f) If a loss occurs that is covered by a property insurance policy in the name of an association of unit owners and another property insurance policy in the name of a unit owner:
    - (i) the association's policy provides primary insurance coverage; and
    - (ii) notwithstanding Subsection (9)(f)(i) and subject to Subsection (9)(g):
      - (A) the unit owner is responsible for the deductible of the association of unit owners; and
      - (B) building property coverage, often referred to as coverage A, of the unit owner's policy applies to that portion of the loss attributable to the policy deductible of the association of unit owners.
- (g)
- (i) As used in this Subsection (9)(g) and Subsection (9)(j):
    - (A) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by a property insurance policy of an association of unit owners.
    - (B) "Unit damage" means damage to a unit or to a limited common area or facility appurtenant to that unit, or both.
    - (C) "Unit damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to unit damage.
  - (ii) A unit owner who owns a unit that has suffered unit damage as part of a covered loss is responsible for an amount calculated by applying the unit damage percentage for that unit to the amount of the deductible under the property insurance policy of the association of unit owners.
  - (iii) If a unit owner does not pay the amount required under Subsection (9)(g)(ii) within 30 days after substantial completion of the repairs to the unit or limited common areas and facilities

appurtenant to that unit, an association of unit owners may levy an assessment against the unit owner for that amount.

- (h) An association of unit owners shall set aside an amount equal to the amount of the association's property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.
- (i)
  - (i) An association of unit owners shall provide notice in accordance with Section 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)(g) for the association's policy deductible and of any change in the amount of the deductible.
  - (ii)
    - (A) An association of unit owners that fails to provide notice as provided in Subsection (9)(i)(i) is responsible for the portion of the deductible that the association of unit owners could have assessed to a unit owner under Subsection (9)(g), but only to the extent that the unit owner does not have insurance coverage that would otherwise apply under this Subsection (9).
    - (B) Notwithstanding Subsection (9)(i)(ii), an association of unit owners that provides notice of the association's policy deductible, as required under Subsection (9)(i)(i), but fails to provide notice of a later increase in the amount of the deductible is responsible only for the amount of the increase for which notice was not provided.
  - (iii) The failure of an association of unit owners to provide notice as provided in Subsection (9)(i)(i) may not be construed to invalidate any other provision of this section.
- (j) If, in the exercise of the business judgment rule, the management committee determines that a covered loss is likely not to exceed the property insurance policy deductible of the association of unit owners and until it becomes apparent the covered loss exceeds the deductible of the property insurance of the association of unit owners and a claim is submitted to the property insurance insurer of the association of unit owners:
  - (i) a unit owner's policy is considered the policy for primary coverage for a loss occurring to the unit owner's unit or to a limited common area or facility appurtenant to the unit;
  - (ii) the association of unit owners is responsible for any covered loss to any common areas and facilities;
  - (iii) a unit owner who does not have a policy to cover the damage to that unit owner's unit and appurtenant limited common areas and facilities is responsible for that damage, and the association of unit owners may, as provided in Subsection (9)(g)(iii), recover any payments the association of unit owners makes to remediate that unit and appurtenant limited common areas and facilities; and
  - (iv) the association of unit owners need not tender the claim to the association's insurer.
- (k)
  - (i) An insurer under a property insurance policy issued to an association of unit owners shall adjust with the association of unit owners a loss covered under the association's policy.
  - (ii) Notwithstanding Subsection (9)(k)(i), the insurance proceeds for a loss under a property insurance policy of an association of unit owners:
    - (A) are payable to an insurance trustee that the association of unit owners designates or, if no trustee is designated, to the association of unit owners; and
    - (B) may not be payable to a holder of a security interest.
  - (iii) An insurance trustee or an association of unit owners shall hold any insurance proceeds in trust for the association of unit owners, unit owners, and lien holders.
  - (iv)

- (A) If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.
- (B) After the disbursements described in Subsection (9)(k)(iv)(A) are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the association of unit owners, unit owners, and lien holders, as provided in the declaration.
- (l) An insurer that issues a property insurance policy under this section, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to:
  - (i) the association of unit owners;
  - (ii) a unit owner, upon the unit owner's written request; and
  - (iii) a holder of a security interest, upon the holder's written request.
- (m) A cancellation or nonrenewal of a property insurance policy under this section is subject to the procedures stated in Section 31A-21-303.
- (n) A management committee that acquires from an insurer the property insurance required in this section is not liable to unit owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.
- (o)
  - (i) Unless required in the declaration, property insurance coverage is not required for fixtures, improvements, or betterments in a commercial unit or limited common areas and facilities appurtenant to a commercial unit in a mixed-use condominium project.
  - (ii) Notwithstanding any other provision of this section, an association of unit owners may obtain property insurance for fixtures, improvements, or betterments in a commercial unit in a mixed-use condominium project if allowed or required in the declaration.
- (p)
  - (i) This Subsection (9) does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss.
  - (ii) Subsection (9)(p)(i) does not affect Subsection (7).
- (10)
  - (a) This Subsection (10) applies to a liability insurance policy required under Subsection (3)(b).
  - (b) A liability insurance policy shall be in an amount determined by the management committee but not less than an amount specified in the declaration or bylaws.
  - (c) Each unit owner is an insured person under a liability insurance policy that an association of unit owners obtains, but only for liability arising from:
    - (i) the unit owner's ownership interest in the common areas and facilities;
    - (ii) maintenance, repair, or replacement of common areas and facilities; and
    - (iii) the unit owner's membership in the association of unit owners.